IN THE HIGH COURT OF UTTARANCHAL AT ANINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 57 of 2005 (SB)

Date of decision: 7th July, 2005

A.F.R. (Approved for Reporting)

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Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANHCHAL AT NAINITAL

Writ Petition No. 57 of 2005 (S/B)

Arvind Mehrotra
S/o Late Sri Jagat Narain Mehrotra,
Posted as Senior Medical Officer,
Community Health Centre, Mussoorie,
District Dehradun serving as
Senior Pathologist St. Mary's Hospital,
Mussoorie, District Dehradun ..... Petitioner

Versus

1. State of Uttaranchal through Principal Secretary, Department of Medical, Health and Family Welfare, Uttaranchal Shasan, Dehradun.
2. Director General, Medical, Health and Family Weelfare, Uttaranchal, Dehradun
3. Chief Medical Officer, Dehradun.
4. Dr. D.C. Dhyani,
   posted as Chief Medical Officer,
   Dehradun ..... Respondents

……..

Mr. Manoj Tieari, learned counsel for the petitioner.
Mr. K.P. Upadhyaya, Standing Counsel for the State of Uttaranchal.

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble P.C. Pant, J.

[Per Hon'ble the Chief Justice (Oral)]

1. The petitioner Dr. Arvind Mehrotra Challenges his transfer from the post of Senior Medical Officer, Community Health Centre, Mussoorie, District Dehradun to the post of Senior Pathologist, Government Joint Hospital Roorkee, District Haridwar. The impugned order (Annexure 6) was passed by the first respondent – Principal Secretary, Department of Medical, Health and Family Welfare, Government of Uttaranchal on08.04.2005. though the petitioner had applied for stay of operation of the impugned order, the prayer for interim relief was rejected on 26.04.2005. Respondents have filed counter affidavits and the petitioner has filed rejoinder affidavit.

2. We have heard Mr. Manoj Tiwari, learned counsel for the petitioner and Mr. K. P. Upadhyaya, learned Standing Counsel for the State of Uttaranchal who appeared for the respondents. We have also perused the relevant files made available by the learned Standing Counsel.

3. It is stated in the impugned order that the petitioner is transferred on administrative grounds. According to the averments in the counter affidavit of the first respondent also, the transfer was made on administrative grounds. The contention is supported by the relevant files. It is seen from the relevant files that the fourth respondent Dr. D. C. Dhyani, Chief Medical Officer, Dehradun had sent a D.O. Letter No. CMO/ST/2005/2849 dated 29th January, 2005 to Dr. R.C. Arya, Director General, Medical Health and Family Welfare. The contents of the letter, as translated in English by the learned Standing Counsel, are as follows:

> " I want to bring to your notice about Dr. Arvind Kumar Mehrotra, Senior Medical Officer, Community Health Centre, Mussoorie that the reputation of the said Community Health Centre is going down day by day since Dr. Mehrotra submitted his joining in the Community Health Centre. Dr. mehrotra is spending most of the time on leave and when he returns back from leave he disappears from the Headquarters unauthorisedly as a result of which the Subordinate Officers / Officials have also started to follow him due to which the atmosphere of mismanagement is prevailing in the Hospital and he has no coordination with any of the Officers / Officials nor he has any control over his Subordinate Offices / Officials and they do not obey him.
>
> I have asked him umpteen times to allot the residential quarters in the Hospital premises to the working employees after getting vacated the quarters from the retired employees who are illegally occupying the quarters; but he has failed to get vacated the unauthorisedly occupied accommodations because he has no time to spare from his leave. Due to the aforesaid reasons apart from the national programmes, projects and administrative works the image of the Department is being tarnished because of Dr. Mehrotra as the Department has a direct public dealing.
>
> In my opinion for the successful implementation of national programmes, improvement in administrative works and restoring the faith of the public, Dr. Mehrotra's transfer from the aforesaid post would be in the public interest.

> Therefore, it is requested that kindly immediately transfer Dr. Arvind Kumar Mehrotra, Senior Medical Officer, Community Health Centre, Mussoorie from District Dehradun to another District in public interest."

The second respondent forwarded the said letter dated 29.01.2005 to the first respondent endorsing the views of the fourth respondent and recommending that the petitioner may be transferred to the Government Joint Hospital, Roorkee. The above proposal of the second respondent was processed in the Government and the first respondent passed the impugned order transferring the petitioner from Mussooried to Roorkee. The Government filed disclosed that the decision of the first respondent was based only on the letter of the fourth respondent and the proposal of the second respondent. If the statements contained in the above mentioned letter dated 29.01.2005 of the fourth respondent were correct, they could be acted upon, as the facts and circumstances mentioned in the letter constituted sufficient administrative grounds to transfer the petitioner. The first respondent had no reason to disbelieve the statements in the letter written by the 4th respondent, who was the recommendation of the second respondent who is the Head of the Department. Hence, we are satisfied that the impugned transfer was made on administrative grounds and not for any extraneous considerations and that it does not call for any interference by the High Court in exercise of the power under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner submitted that the impugned transfer is illegal for the reason that the petitioner was subjected to transfer when he had only less than three years to retire from service. According to the learned counsel, as per the guidelines for transfer issued by the Government, unless there are special circumstances, a government employee cannot be transferred if he is due to retire within a period of three years. In support of the contention learned counsel invited our attention to Annexure 5 order issued by the Irrigation

Department referring to such a policy, in the counter affidavits filed by the respondents, they have not disputed the existence of such guidelines or policy, however, learned Standing Counsel contended that Annexure 5 order produced by the petitioner relates only to the Irrigation Department and that it is not a general order applicable to other departments. But, in the absence of specific denial in the counter affidavits of the respondents, we may presume that there are guidelines issued by the Government stipulating that unless there are special circumstances, a government employee should not be transferred if he is due to retire within a period of three years. The impugned transfer of the petitioner was in view of the special circumstances stated in the letter dated 29.01.2005 of the fourth respondent and was recommended by the second respondent. The Note File produced before the Court also disclosed that the first respondent passed the impugned order only in view of the said special circumstances. Therefore, it cannot be said that the impugned order violated the guidelines stated to have been issued by the Government.

5. In this connection, it has also to be mentioned that any general guidelines issued by the Govt., unless otherwise provided, can apply only to transfers made during the general transfer and cannot apply to other transfers made on administrative grounds or in the exigencies of service.

6. Moreover, a mere violation of the general guidelines is not justiciable. The guidelines issued by the Government are for the guidance of its officers who order transfers in the exigencies of administration. They do not vest in the Government employees any immunity from transfer. They do not confer on the Government employees any enforceable legal right against transfers. In **Shanti Kumari Vs. Regional Deputy Director, Health Services, Patna Division, Patna and others (AIR 1981 SC 1577)** it was observed by the Supreme Court that even if the transfer was in breach of the Government instructions with regard to transfers, the aggrieved Government servant

could only approach the authorities for redressal of the grievance. In **Mrs. Shilpi Bose and others Vs. State of Bihar and others (AIR 1991 SC 531),** the Supreme Court held that even if a transfer is passed in violation of the executive instructions or orders, the Courts ordinarily should not interfere with the order and that the affected party should approach the higher authorities. It was also observed that if the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration and that it will not be conducive to public interest. The Supreme Court also opined that the courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory rule or *mala fide.* In **B. Varadha Rao Vs. State of Karnataka and others (AIR 1986 SC 1555),** the Supreme Court held that transfer of a Government servant who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. It was also held that no Government servant can claim to remain in a particular place or in a particular post unless his appointment itself is to a specified non-transferable post. In the light of the principles laid down by the Supreme Court, the impugned transfer is not liable to be interfered with on the ground of violation of any general guidelines relating to transfers.

7. Learned counsel for the petitioner then contended that the impugned order is vitiated by *mala fides.* In support of his contention, he invited our attention to the averments contained in paragraphs 8, 9 and 11 of the writ petition. We have carefully read the averments in those paragraphs. We have also read the averments made in the counter affidavits and particularly the counter affidavit of respondent no. 4, in reply to the averments and allegations made by the petitioner. Having considered the rival pleadings, we are not satisfied that the petitioner could establish any extraneous influence or ulterior motive behind the impugned transfer. Many of the matters mentioned by the petitioner in

paragraphs 8, 9 and 11 of the writ petition are not germane to the issue. They are not relevant for deciding the validiy of the impugned transfer. If the petitioner has any other grievances regarding his service benefits which are not connected with his transfer, he will have to resort to other remedies available to him. We refrain from expressing any view regarding such grievances. Suffice to say that the petitioner could not establish that the impugned order is vitiated by *mala fides.* In **E.P.Royappa Vs State of Tamil Nadu and another (AIR 1974 SC 555),** a Constitution Bench of the Supreme Court has held that the burden of establishing *mala fides* is very heavy on the person who alleges it. The Court has observed that allegations of *mala fides* are often more easily made than proved, and that the very seriousness of such allegations demands proof of a high order of credibility. In our view, the petitioner in this case has not discharged the burden of establishing *mala fides.*

8. Learned counsel for the petitioner submitted that the letter dated 29.10.2005 of the fourth respondent was a motivated letter and that it was sent by him with the ulterior motive of getting the petitioner transferred from Mussoorie. It is contended that the fourth respondent was inimical to the petitioner and the allegations contained in the letter were baseless. However, the petitioner has not stated any specific reason for such enmity or ill-will on the part of the fourth respondent towards the petitioner. Learned counsel sought to place reliance on the averments contained in paragraphs 8, 9 and 11 of the writ petition to argue that the fourth respondent was inimical to the petitioner. We do not find any merit or substance in this contention. The averments in paragraphs, 8, 9 and 11 of the writ petition do not disclose any specific reason for which the fourth respondent could have enmity or ill-will towards the petitioner. We are constrained to observe that it is only natural for any person to allege *mala fides* against a superior officer when an adverse report is sent by the superior officer against him. We are also not impressed by the contention that the allegations in the letter of the fourth respondent were baseless. Whether the fourth respondent

had sent the letter dated 29.01.2005 for valid and sufficient reasons could be inferred from one fact alone. The learned Standing Counsel pointed out with reference to the original Attendance Register that the petitioner was in the habit of leaving the station and being absent from duty after marking 'C. L.' (casual leave) in the Attendance Register and later marking the attendance by overwriting on 'C. L.' when he returned to the station. He drew our attention to various columns in the Attendance Register, particularly the attendance marked by the petitioner on 23rd, 24th,25th and 26th August, 2004 which clearly supported the contention of the Standing Counsel. In such circumstances, we are not inclined to believe the version of the petitioner that the fourth respondent sent the letter dated 29.01.2005 making baseless allegations against the petitioner and that it was due to his enmity and ill-will towards the petitioner.

9. In **State of U.P. and others Vs. Govardhan Lal [(2004)11 Supreme Court Cases 402]** the Hon'ble Supreme Court has held as follows:

> "7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they

do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of administrative needs and requirements of the situation concerned. This is for the reason that court or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

In **National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan [2001 (4) S.L.R. 272]** the Supreme Court has held as follows:

" On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention ahs been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer the courts or the tribunals cannot interfere with such orders as a matter of routine as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the serviced concerned."

In the case before us the petitioner could not establish any violation of statutory provisions or any *mala fides* on the part of the respondents in issuing the impugned order of transfer. Hence the view we have taken in

this case is supported by the above mentioned decisions of the Hon'ble Supreme Court of India.

10. In the above circumstances, we do not find any merit in the writ petition. The writ petition is dismissed.

(P.C. Pant, J.) 07.07.2005

(Cyriac Joseph, C.J.) 07.07.2005

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